

Legislative Oversight: An Appraisal of the Law and Practice

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Abstract

This paper examines the oversight tool that was provided for the legislature in the constitution of the Federal Republic of Nigeria. The Nigerian Constitution enshrined the principles of Separation of Power and it is in the spirit of checks and balance that the power of oversight was given to the legislature. The core of this power of oversight vested in the legislature is to check the excesses of the executive and also to ascertain that public policies and activities aimed at improving the welfare and security of citizens are diligently implemented. The paper X-rays these tools of oversight and their usefulness in ensuring that the purpose for which they were designed are achieved for the overall good of the nation. The paper also aimed to serve as a guide especially to new legislators as they embark on the task of legislation and oversight set before them. The paper adopted both the doctrinal and non-doctrinal methodology as the paper made use of field observation of how the tools of oversight has been employed over the years. The paper also considered the relevant provisions of the Constitution and the opinions of learned scholars on the best approach to using oversight tools by the Legislature. The paper finds that the lack of transparency and accountability alongside the overzealousness of legislators are the main challenges in the effective use of the tools of oversight. The paper recommends that committee membership in the National Assembly should be based on qualification, the paper also recommends a strict adherence to the provisions of the constitution on the use of the oversight tools by the legislators.

Keywords: legislature, oversight, committee, investigative hearings.

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1. Introduction

The principle of separation of power is the major ingredient of constitutional democracy which guarantees that the executive arm of government does not control the affairs of the legislature nor the judiciary. The doctrine of the separation of powers implies that there should be three separate organs of government with their separate sets of functions and powers.¹ The presidential system of government being practiced in Nigeria makes provision for separation of powers, apportioning distinct powers and duties to the executive, legislative and judicial arms of government.²

The legislature makes laws which the executive implements. The judiciary is legally called upon in the determination of civil rights and obligations to interpret the laws. This system of government understands from the onset that powers may be abused and therefore introduced a system that guarantees checks and balances amongst the three arms of government.³ Therefore, through the power of interpretation, the courts can declare laws made by the legislature unconstitutional, null and void and of no effect whatsoever. On the other hand, the legislature has the power of oversight over the execution and administration of laws by the executive.⁴

In the discharge of their duties, the legislature plays a number of roles, apart from its primary function of legislating laws, amending or repealing existing laws, it serves a number of overlapping objectives and purposes to improve the efficiency, economy, and effectiveness of governmental operations; evaluate programmes and performance; detect and prevent poor administration, waste, abuse, arbitrary and capricious behavior, or illegal and unconstitutional conduct; protect civil liberties and constitutional rights; inform the general public and ensure that executive policies reflect the public interest; gather information to develop new legislative proposals or to amend existing statutes;

¹ Onyekpere Eze, 'Opinion: Legislative Oversight and the Budget', available at <http://omojuwa.Com/2012/11/opinion-legislative-oversight-and-the-budget>, accessed 14 September 2019.

² Chapters 4, 5 & 6 of the Constitution of the Federal Republic of Nigeria 1999.

³ Ejikeme J. N, 'Legislative Oversight in Nigeria: A watchdog or a hunting Dog?', *Journal of Law, Policy and Globalization*, www.iiste.org, ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.22, 2014.

⁴ (n1).

ensure administrative compliance with legislative intent; and prevent executive encroachment on legislative authority.⁵ Most of these functions especially acting as check on the executive is done via the functions of oversight over the actions or inactions and other activities of the executive and its agencies.⁶

Power of legislative oversight is embedded in the constitution,⁷ it is imperative because it encourages checks and balances, enthrones fiscal discipline, good governance, accountability and transparency in public offices.⁸ It promotes accountability in government through enforcing efficiency and cost effectiveness in the course of generating people-centered policies and programmes necessary to address the numerous challenges confronting governments at all levels.⁹ Legislative oversight takes place when the National Assembly (the Senate and the House of Representatives) continually review the effectiveness of the workings of MDAs and ensuring that budgetary allocations given to MDAs are judiciously used and accounted for. This paper seeks to look at the practice of legislative oversight in Nigeria by comparing the law and the practice with a view to identifying the gaps between the laws and the practice and proffering solutions.

2. Conceptual Clarifications and Legal Framework for Legislative Oversight

2:1 Conceptual Framework

Oversight is defined as the process by which the legislative body monitors, scrutinizes, reviews and evaluates the performance of the executive arm of government or its agencies on a continuous basis to ensure effectiveness, efficiency and good performance.¹⁰

It has also been defined as “the exercise of constitutional powers by the legislature to check or control the exercise of

⁵ Arowolo G.A, 'Oversight functions of the legislature: An instrument for nation building', *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, (2010) 1(1) 27-40.

⁶ Ibid.

⁷ Sections 88, 89, 128 and 129 of the 1999 Constitution.

⁸ '(n3)'

⁹ Ibid

¹⁰ Aluko B.A, 'Enhancing Parliamentary Oversight for Effective Security Sector Reform in Democratic Nigeria', *Ghana Journal of Development Studies*, (2015) 12(1-2) 177-194.

constitutional powers of other arms of government, and more specifically to check or control the exercise of executive powers or to make the executive accountable and responsible to the electorate”.¹¹ According to Madue¹² oversight can be performed ex-ante- that is during the design and implementation of a programme or policy, as well as ex-post, after its implementation”. Hence, he defined oversight as “...it entails the informal and formal, watchful, strategic and structured scrutiny exercised by legislatures in respect of the implementation of laws, the application of the budget, the strict observance of statutes and the constitution”.¹³ The use of the term ‘oversight’ is traced to Professor Woodrow Wilson who defined it as the “duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice and to embody the will and wisdom of its constituents.” It has also been defined as “the review, monitoring and supervision of government and public agencies, including the implementation of policy and legislation.”¹⁴

Legislative oversight in Nigeria involves keeping an eye on the activities of government agencies especially the executive branch, on behalf of the Nigerian people. This process brings to the knowledge of the public what the executive branch is doing, and affords the electorate the opportunity to determine whether public servants are really serving their collective interest or not.¹⁵ According to Ndoma-Egba,¹⁶ legislative oversight refers to the power of the legislature to review, monitor and supervise government agencies, programmes, activities and policy implementation strategies of the executive arm of government. This is to ensure that the arm sustains the principles of good governance, remains responsive, transparent and accountable

¹¹ Kazeem A.O, 'Legislative oversight functions in Nigeria—Odyssey of hunters becoming the hunted', *Acta Universitatis Danubius Juridica*, (2013), 9(2) 79-95.

¹² Kolisang M.L, *The impact of oversight mechanisms on service delivery in the Midvaal Local Municipality* (Doctoral dissertation, North-West University (South Africa). Vanderbijlpark Campus 2019).

¹³ Ibid

¹⁴ Ibid

¹⁵ Usman M.M, Assessment of the role of National Assembly Oversight functions on corruption in Nigerian Federal public service 2007-2013 (Master's thesis, Department of Public Administration, Ahmadu Bello University Zaria).

¹⁶ Ndoma-Egba, V, Legislative oversight and Public Accountability. (*A paper presented at the Annual Public Lecture of the Faculty of Social Sciences*, University of Nigeria-Nsukka on 19th October 2012.

to the electorates. The committee structure of the National Assembly (House of Representatives and Senate) is being used to execute oversight functions through supervision, watchfulness, or curtail excesses, review of executive actions and activities.

Oversight functions ensure that activities of the executive arm of government and its agencies are kept under constant surveillance and scrutiny by the legislature. A leading role for the legislature has always been adjudged an essential defense against executive tyranny. The legislature monitors, raises queries and (where necessary) censors executive activities, activities of government agencies (such as ministries, departments, parastatals, etc.) to ensure good governance and accountability¹⁷

The underlining objective of legislative oversight is strengthening the concept of separation of power and checks and balances in governance. According to John Locke¹⁸ "...it may be too great a temptation to human frailty, apt to grasp at power for the same persons who have the power of making laws to have also in their hands the power to execute them, whereby they may exempt themselves from obedience to the laws they make..." in a nutshell, Legislative oversight basically refers to the responsibility (ies) of the legislative arm of government to supervise, using its law making prerogative and its allied functions over, governmental institutions and bodies, to promote compliance with constitutional provisions and good governance. The legislature exercises parliamentary oversight by making laws that define and regulate the activities-mandate, operations and finances-of state institutions and agencies for the achievement of the collective goal(s) of the state.¹⁹

2:2 *Legal Framework for Legislative Oversight*

The oversight function of the legislature in Nigeria finds constitutional backing in Sections 88, 89, 128 and 129 of the 1999 Constitution. Section 88 subsections 1 and 2 of the 1999 Constitution of the Federal Republic of Nigeria provides that:

¹⁷ Nwagwu E.J, 'Legislative oversight in Nigeria: A watchdog or a hunting dog', *Journal of L Policy & Globalization*, (22) 16.

¹⁸ Johari, J.C., 1989. *Principles of modern political science*. Sterling Publishers.

¹⁹ Benjamin A.A, 'Enhancing Parliamentary Oversight for Effective Security Sector Reform in Democratic Nigeria'. *Ghana Journal of Development Studies*, (2015) 12(1-2) 177-194.

“(1) Subject to the provisions of this constitution, each House of the National Assembly shall have power by resolution published in its journal or in the Official Gazette of the Government of the Federation to direct or cause to be directed an investigation into-

(a) any matter or thing with respect to which it has power to make laws; and

(b) the conduct of affairs of any person, authority, ministry or government department charged, or intended to be charged, with the duty of or responsibility for-

(i) executing or administering laws enacted by the National Assembly, and (ii) disbursing or administering moneys appropriated or to be appropriated by the National Assembly.

(2) the powers conferred on the National Assembly under the provisions of the section are exercisable only for the purpose of enabling it to –

(a) make laws with respect to any matter within its legislative competence and correct any defects in existing laws; and

(b) expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it”.

Also Section empowers the legislature to procure evidence, summon persons to give evidence and require such evidence to be given on oath through examination of witnesses. The National Assembly has the power to summon persons to procure additional document or oral evidence and (where necessary) issue a warrant to compel attendance by any person so required, on the pain of punishment if they fail to attend.

Section 128 also provide that:

“(1) Subject to the provisions of this constitution, a House of Assembly shall have power by resolution

published in its journal or in the Office Gazette of the Government of the State to direct or cause to be directed an inquiry or investigation into-

- (a) any matter or thing with respect to which it has power to make laws; and
- (b) the conduct of affairs of any person, authority, ministry or government department charged, or intended to be charged, with the duty of or responsibility for-
 - (i) executing or administering laws enacted by that House of Assembly, and
 - (ii) disbursing or administering moneys appropriated or to be appropriated by such House.
- (2) the powers conferred on a House of Assembly under the provisions of this section are exercisable only for the purpose of enabling the House to-
 - (a) make laws with respect to any matter within its legislative competence and correct any defects in existing laws; and
 - (b) expose corruption, inefficiency of waste in the execution or administration of laws within its legislative competence and the disbursement or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.”

By the above constitutional provision therefore: the legislature has the constitutional responsibility to supervise and regulate the activities of the executive arm of government to eschew waste and ensure fiscal discipline, observance of the rule of law and strict compliance in implementing laws as passed by the legislature, and execution of development programs and policies. The Legislature is empowered to procure evidences whether written or oral or even circumstantial evidences that may be material to the particular subject matter under review, require such evidence given on oath and can even issue a warrant compelling attendance of any person and this warrant can be executed by any member of the Nigerian Police

Force.²⁰ The legislature by the above constitutional provision can use its legislative powers to pass a law to overrule agency decisions, and/or to narrow the agency's jurisdiction.²¹ It can use its appropriations power to restrict the agency's funding.²² It can also exercise some quasi- powers by subpoenaing witnesses during investigation and compelled their attendance, it can also issue fines for noncompliance.²³

3. Tools for Legislative Oversight and Types of Oversight in Nigeria

Broadly speaking, oversight may be classified into two: ²⁴

- i. "political" oversight which takes place during question time or when the actions of government are scrutinized during public sittings; and
- ii. "technical" oversight, which requires more attention of committees to establish facts and evidence to guide informed legislative decisions in a speedy and more efficient manner than could be possible at plenary sittings. In a more specific sense, this classification includes: Routine oversight: Appropriation Oversight: Public Accounts Committee Oversight, etc.²⁵

The most common oversight tools are oversight visits, committee hearings (public/investigative), hearings in plenary sessions of the parliament, the creation of commissions of inquiry, questions, the public account committees, auditors general, interpolation and ombudsman. ²⁶ Particularly, the legislative standing committees are responsible for continuous review of work of MDAs in their subject areas. Legislatures have also created special and standing committees to evaluate agency operation and performance.

²⁰ Section 89 and 129 of the Constitution of the Federal Republic of Nigeria.

²¹ Aliyu M.K, Ikedinma H.A and Bello M.A "Analysis of the Challenges of legislative oversight on Good Governance in Nigeria" 2018, Developing Country Studies, 8(8).

²² (n3)

²³ Ibid. See also section 88 of the 1999 Constitution.

²⁴ See PLAC guide to legislative oversight in the National Assembly 2016, available at <<https://placng.org> > guide-to-legislative-oversight-in-the-national-assembly>, accessed 15 June 2023.

²⁵ Ibid.

²⁶ Ibid.

In addition, the National Assembly may review the rules and regulations developed by the executive. The floor of the Senate or House of Representatives is also a means of conducting legislative oversight because the legislature can hear ministers and government officials and discuss all aspects of government policy.²⁷

Also, section 89 and 129 of the 1999 Constitution provides a list of guidelines and powers that are to assist the legislature in carrying out this function. These include issuing summons, warrants and fines when its orders, as approved by the Constitution, are violated. Other tools or ways the legislature can conduct oversight include the following:²⁸

- The legislature can simply ask the government for information.
- The legislature can ask the government for public clarification of policy.
- The legislature can obtain information from sources outside the government.
- The legislature can express its view to the government and the public.
- The legislature can undertake informal meetings with executive officials.

In more drastic instances, the legislature has the constitutional power to recommend the removal of office holders whose appointments the legislature has power to confirm where it is believed that the office holder(s) is not effectively discharging his constitutional or statutory duties.

4. Oversight Tools in Nigeria: Their uses and their Challenges

4:1 The Committee System

Legislative oversight in Nigeria are usually carried out through the committee system. A committee has been regarded as a 'human group' of the entire legislative assembly²⁹ According to Nwuche, "a

²⁷ Ewuim N.C, Nnamani D.O and Eberinwa O.M, 'Legislative Oversight and Good Governance in Nigeria National Assembly: An Analysis of Obasanjo and Jonathan's Administration. *Review of public administration and management*, (2014) 400(3615) 1-14.

²⁸ Ibid.

²⁹ Ibid.

committee analyzes the contents of all legislative instruments, synthesizes them and forwards its findings to the full House for consideration”.³⁰ Section 62 (1 - 4)³¹ of the Nigerian constitution provides for legislative committees at the National Assembly while Section 103(1-3) makes provisions for committee at the State Houses of Assembly level.³²

The essence of these committees is to strengthen the oversight power of the Legislature if they function properly.³³ In addition, the responsibilities of the committees includes physical inspections of projects, conversing with people, assessing the impact of delivery and developing reports for adoption by committees which contain recommendations for the Houses to consider.³⁴ The committees are often privileged to obtain direct information on the outcomes of the projects. In the course of its routine activities, these Committees have

³⁰ Nwuche cited in Nwozo A. and Olanrewaju J.S., 'Oiling the Legislature: An Appraisal of the Committee System in Nigeria's National Assembly. In *The Nigerian National Assembly* 2019 165-187. Springer, Cham.

³¹ 62. (1) The Senate or the House of Representatives may appoint a committee of its members for such special or general purpose as in its opinion would be better regulated and managed by means of such a committee, and may by resolution, regulation or otherwise, as it thinks fit, delegate any functions exercisable by it to any such committee.

(2) The number of members of a committee appointed under this section, their terms of office and quorum shall be fixed by the House appointing it.

(3) The Senate and the House of Representatives shall appoint a joint committee on finance consisting of an equal number of persons appointed by each House and may appoint any other joint committee under the provisions of this section.

(4) Nothing in this section shall be construed as authorizing such House to delegate to a committee the power to decide whether a bill shall be passed into law or to determine any matter which it is empowered to determine by resolution under the provisions of this Constitution, but the committee may be authorized to make recommendations to the House on any such matter.

³² 103 (1) A House of Assembly may appoint a committee of its members for any special or general purpose as in its opinion would be better regulated and managed by means of such a committee, and may by resolution, regulation or otherwise as it thinks fit delegate any functions exercisable by it to any such committee.

(2) The number of members of a committee appointed under this section, their term of office and quorum shall be fixed by the House of Assembly.

(3) nothing in this section shall be construed as authorising a House of Assembly to delegate to a committee the power to decide whether a bill shall be passed into law or to determine any matter which it is empowered to determine by resolution under the provisions of this constitution, but such a committee of the House may be authorised to make recommendations to the House on any such matter.

³³ Friedberg C and Hazan R.Y., 'Legislative oversight. *Comparative Assessments of Parliament (CAP) Note*, Center for International Development, Rockefeller College University at Albany State University of New York 2012.

³⁴ Ibid

the powers to engage experts' knowledge and analysis.³⁵ A committee conducts its business on behalf of the House and must therefore report back to the House on matters referred to it for consideration and report.

4:2 *Public Hearing*

Another way of carrying out oversight functions in Nigeria by the legislature is through public hearings. Section 88 of the Constitution empowers the National Assembly to conduct investigation on matters it has power to legislate upon. This power is with a view to exposing corruption, inefficiency or waste. In carrying out a probe or investigation, the National Assembly can invite 'anybody' who is perceived to be linked with the issue on ground.³⁶ The use of public hearing by the National Assembly is also a regular tool to arrive at consensus or what could be done on a particular national issue. The Senate or House of Representatives can put up a committee; mandate it to conduct a public hearing by visiting federal constituencies where referendum will be conducted, debate allowed and position papers submitted. The submitted opinions are thereafter collated and interpreted to give policy direction. The practice is to submit such decision to the legislature for endorsement before it is finally sent back to the President for his assent.³⁷

Sometimes people's opinions could be sought on what to 'be done' or steps to be taken as regards a contentious issue. Public opinions have been conducted in areas such as the fuel subsidy removal, state creation, resource control and new number plates.³⁸ Recently public hearings have been conducted on issues of national interest like the Not Too Young to run bill and the NGO regulatory commission bill which raised so much dust in the country.

³⁵ Bello-Imam I.B., 'Corruption and national development: *IB Bello-Imam and Mike Obadan Democratic Governance and Development Management in Nigeria's Fourth Republic*', 2004, pp.199-2003.

³⁶ Ibid

³⁷ See (PLAC n24). See also Ihedioha E. (2012). 'The Legislature: Roles, Misconceptions and Experience in the Consolidation of Democracy in Nigeria' Daily Compass, June 27th, 28th& July 1st& 2nd 2012.

³⁸ (n3)

4:3 *Plenary Debates*

Plenary debates are a further means to bring important information to the attention of the executive. In plenary debates, certain mechanisms for conducting oversight are used which include question time, the consideration of committee reports, showcasing, scrutinizing and debating the implementation of policy and budget votes.³⁹

4: 3 *Power of Summon and Warrant*

Section 89 of the 1999 Federal Republic of Nigeria empowers the National Assembly to ‘invite’ anybody that is perceived to have any evidence as regards an investigation. This same power also enables the National Assembly to request any document to facilitate an investigation. The section enumerated some of the powers of the National Assembly.⁴⁰ This power provides sufficient oversight environment for National Assembly. The State Houses of Assembly are also given these powers in sections 129 of the constitution to procure evidences, summon persons to give evidences and also issue warrants compelling the attendance of any person fails or refuses summons.

³⁹ See PLAC (n24)

⁴⁰ 89. (1) For the purposes of any investigation under section 88 of this Constitution and subject to the provisions thereof, the Senate or the House of Representatives or a committee appointed in accordance with section 62 of this Constitution shall have power to –

- (a) procure all such evidence, written or oral, direct or circumstantial, as it may think necessary or desirable, and examine all persons as witnesses whose evidence may be material or relevant to the subject matter;
- (b) require such evidence to be given on oath;
- (c) summon any person in Nigeria to give evidence at any place or produce any document or other thing in his possession or under his control, and examine him as a witness and require him to produce any document or other thing in his possession or under his control, subject to all just exceptions; and
- (d) issue a warrant to compel the attendance of any person who, after having been summoned to attend, fails, refuses or neglects to do so and does not excuse such failure, refusal or neglect to the satisfaction of the House or the committee in question, and order him to pay all costs which may have been occasioned in compelling his attendance or by reason of his failure, refusal or neglect to obey the summons, and also to impose such fine as may be prescribed for any such failure, refused or neglect; and any fine so imposed shall be recoverable in the same manner as a fine imposed by a court of law.

(2) A summons or warrant issued under this section may be served or executed by any member of the Nigeria Police Force or by any person authorized in that behalf by the President of the Senate or the Speaker of the House of Representatives, as the case may require.

4:4 Resolution

A resolution is also a tool that is used in the legislative houses. They are expression of opinions that can be introduced in any of the legislative houses, but unlike bills, their effect is limited. A Resolution could be simple, concurrent or joint”.⁴¹ A simple resolution deals with the operation any house alone and it is considered only by the chamber in which it was introduced. Simple resolutions are not binding in nature and do not require the approval of the other chamber. Concurrent resolution relates to the operation of the National Assembly that affects both chambers. A joint resolution unlike the simple and concurrent is a motion mutually passed by both chambers even though it can come from either Chamber. A piece of legislation introduced as a bill can be amended by a joint resolution of both chambers. It has a legal status but it is not binding.

4:5 The tools in application

Through the above mentioned mechanisms, the Nigerian legislature has acted as watchdog over executive administration. Institutional check has been served on executive excesses by their scrutiny of the executive administration – the institutional check lacking under the earlier successive military juntas,⁴² between 1999 and 2012, the legislature has succeeded in publicizing the activities of the Nigerian government and has sometimes put the executive and its agencies under pressure to defend its administrative actions. Investigations have been carried out against the personnel of government and its agencies in most cases, with a view to exposing financial corruption, wastes and mismanagement.⁴³

In 2008, the former Speaker of the House of Representatives Dimeji Bankole revealed to the whole world that the NNPC had no record whatsoever of how many barrels of crude oil had been sold and at what price in the last 40 years.

⁴¹ Ihedioha cited in Salami T.A., 'Performance of Oversight Functions by the National Assembly: An Assessment of the 7th House of Representatives (2011-2015)–Nigeria'.

⁴² Fashagba J.Y., 'The legislature and democratization process in Nigeria's Fourth Republic'. *Lapai International Journal of Management and Social Sciences*, 2011 3(1) 1-19.

⁴³ Ibid

In the same session (6th National Assembly), under Bankole's leadership, the House committee on Power and Steel Development investigated the billions of dollars allegedly withdrawn by the former government of Olusegun Obasanjo for the rehabilitation and construction of new power plants.⁴⁴ The House also investigated the N63.5 billion contract for a second runway for Nnamdi Azikwe Airport in Abuja.⁴⁵ Other major legislative probes undertaken have included the accusation of the then Federal Capital Territory (FCT) Minister, Mallam Nasir El-Rufai who the Senate in 2007 accused of gross abuse of office and power in the allocation of plots of land and demolition in the FCT. Some of the allottees were reported to have been under aged, some got the allocation before completing the application process, some got theirs on the day they made the application and in general, there was no record of the application fee payment in the files. The certificates of occupancy were reported to have been signed by one Cyril Ezeamaka, a personal assistant to the then Minister.⁴⁶ The powers of the Legislature to investigate the affairs of the executive has even been extended in a certain case beyond the executive's tenure in office. Former President Olusegun Obasanjo was summoned by the House of Representatives probing the expenditure on power sector between 1999 and 2007 when he was in office.⁴⁷ Recently, the House of Representatives directed the Group Managing Director of the Nigerian National Petroleum company ltd, Mele Kyari to produce heads of subsidiaries mentioned in the various audit queries by the Office of the Auditor-General for the Federation. Other legislative investigations conducted over the years by the National Assembly include the 2012 probe of Petroleum

⁴⁴ Emmanuel Aziken & Luka Binniyat, 'The Bankole House: Lessons we learned from his tenure', available at <https://www.vanguardngr.com/2010/11/the-bankole-house-lessons-we-learned-from-his-tenure/> accessed 15 August 2023.

⁴⁵ Ibid.

⁴⁶ Amos Dunia, "FCT probe panel indicts El-Rufai", available at <https://onlinenigeria.com/nm/templates/?a=12740>, accessed 17 August 2023.

⁴⁷ The Cable, "FLASHBACK: What Obasanjo said in 2008 on the '\$16bn', available at <https://www.thecable.ng/flashback-obasanjo-said-2008-16bn-allegation/amp> , accessed 18 August 2023.

Product Fuel Subsidy Administration, the 2012 probe of Security Exchange Commission (SEC), among others. In all cases, the legislature has exposed a gross waste of public funds, outright fraud or mismanagement, as well as abuse of office by political and public office holders.⁴⁸

These legislative investigations are not limited to the National Assembly, as was provided for in section 103 of the Constitution, State Houses of Assembly have also over the years carried out legislative investigations into the activities of the executive. The Osun state House of Assembly in 2022 set up a committee to urgently investigate the exact debt profile of the state as the figure the lawmakers had was different from the figure disclosed by the Governor, Ademola Adeleke as if the matter is not carefully handled, the lawmakers believed it may affect the investment coming into the state.⁴⁹ Also, the Abia state House of Assembly in 2023 commence and investigation of former Commissioner of Finance, Oriaku over his role in the alleged misappropriation of N22 billion state's share of the Paris Club refund. This investigation followed a petition that came on behalf of Anthony Aniobi and Lekwauwaa Ndubueze. This also shows that persons outside the legislature can also file petitions that will later ignite oversight functions on the part of the legislature.⁵⁰

4: 5 Challenges to oversight in Nigeria: lack of Transparency and Accountability

Section 88 of the constitution empowers the National Assembly to conduct investigation into areas of its competency in public policy. The essence is to ensure prudent management of national resources. The oversight power is required to be exercised by a resolution published in the National Assembly's journals or in

⁴⁸ Fashagba J. Y, 'Legislative Oversight under the Nigerian Presidential system', *Journal of Legislative Studies* 2009 15(4) 439-539.

⁴⁹ Bola Bamigbola, "Osun Assembly to probe govt's debt profile", available at <https://punchng.com/osun-assembly-to-probe-govts-debt-profile/?amp> , accessed 2 September, 2023.

⁵⁰ Steve oko, "Abia Assembly probes ex-commisioner over N22BN Paris Club refund", available at <https://www.vanguardngr.com/2021/06/abia-assembly-probes-ex-commissioner-over-n22bn-paris-club-refund/amp/>, accessed 3 September, 2023.

the Official Gazette of the Government of the Federation. It is expected that all monies which are appropriated by the lawmakers as an Act of the parliament, having followed the due process of making an Act need to be effectively monitored. The oversight power does not allow the legislature to usurp the functions of the other organs of government, as this could hamper the principles of separation of power. As a result, the power of the National Assembly to carry out oversight functions does not preclude fair play and justice.⁵¹

The principle of fair play should apply in all situations and to all proceedings, no matter who conducts the investigation and for whatever purpose. We can then argue that ‘no power’ should rival that of the judiciary and this is why judicial functions are assigned to the judiciary in the constitution. However, the idea of passing frivolous resolutions is a challenge to the principles of separation of power. While the legislature is empowered to perform oversight function in all honesty, it must be carried out in such a way that the executive is not cowed by the former, no matter how powerful. This seem to have been the practice in Nigeria as instances abound where the legislature in carrying out their oversight functions were seen to be overbearing. For instance the National Assembly, during the administration of President Goodluck Jonathan, passed resolutions for the removal of certain appointees of the President⁵² For instance, Bola Onagoruwa, ex-Director General, Bureau of Public Enterprises (BPE); Harold Demuren of the Nigerian Civil Aviation Authority (NCAA); and Abdulrasheed Maina, Chairman, Pension Reform Task Team were removed by the National Assembly resolutions.

While there are incorruptible lawmakers between 1999 and 2018 at the National Assembly, some of the national lawmakers are culpable of corruption allegation, which have eroded their integrity, credibility and by extension, the oversight role they do. Many people are of the opinion that the members of the National Assembly often embark on oversight functions for mischievous and selfish interest.⁵³

⁵¹ Akomolede I.T. and Akomolede O.B., ‘Legislation as a tool for Good Governance in Nigeria: Legal matters Arising’ *European Journal of Business and Social Sciences* 2012 1(6) 61-68.

⁵² (n3)

⁵³ Obiyan A.S., ‘Presidentialism and the Interface of Legislative Power on Executive Authorities’ (A paper presented at the three-day Induction Seminar for newly elected National and State Legislators in Ondo State held between 23 – 25 May 2011).

Mischievous use of oversight power involves subtle threats of the executive and other public officials to obtaining unmerited private benefits. He posits that studies and observations have shown that selfish and mischievous uses of oversight are major limitations of the legislature in Nigeria.⁵⁴

A very good example can be seen in the case of Mr. Femi Otedola who alleged that the House of Representatives' Committee directed to investigate the alleged frauds on fuel subsidy demanded bribe from the accused individuals.⁵⁵ Also, the House Committee on Power and Steel Development chaired by Rep Elumelu investigations into billions of dollars withdrawn by the Obasanjo government for the rehabilitation and construction of new power plants later led to series of revelations which amounted to the arrest and arraignment of Elumelu and five others for allegedly stealing N5.2 billion belonging to the Rural Electrification Agency.⁵⁶ Another instance happened In 2004, where the Senate Committee on Public Account headed by Mamman Ali probed the activities of Nasir el-Rufai, former Minister of Federal Capital Territory, FCT, and concluded that he erred in appointing and placing two of his aides on outrageous salaries⁵⁷ Although Ali claimed that the affected aides, Aisha Kolo and Abdul Muktar were made to refund the money, the probed minister dismissed the report saying the Senate Committee was merely being vindictive over his revelation that Ibrahim Mantu, former Deputy Senate President, and Jonathan Zwingina, former Deputy Senate Leader, demanded a N54million bribe to clear him as Minister⁵⁸ although the Senate later dismissed the allegation saying it was only to ridicule its reputation. In 2005, Adolphus Wabara, former President of the Senate was removed over the allegation of N55million bribe sought from Fabian Osuji, a former Minister of Education, to appropriate more allocation to his ministry⁵⁹

⁵⁴ Ibid

⁵⁵ Oriola B, '620,000 Scam: My Trial is from God, Says Lawan', New Nigerian, June 22nd 2012.
⁵⁶ (n44)

⁵⁷ Seidu A.A, 'Burden of Democracy', Daily Independent, July 12th 2010.

⁵⁸ Ibid

⁵⁹ Bolaji Y.K., 'How Legislators Encourage Corruption', The Nation, June 20th 2012.

Former President Olusegun Obasanjo has severally accused both Houses of the National Assembly of corruption. He alleged that the National Assembly members often smuggled into the budgets, items not provided for by ministries. According to him: "...they connive with contractors of constituency projects and take kick-backs and yet they have the guts to accuse other people of corruption"⁶⁰ Obasanjo also remarked that most oversight functions of the Nigerian national lawmakers are to satisfy their whims and caprices. In a similar vein, Obiyan (2011)⁶¹ noted that since 1999 there have been allegations of seeking financial inducements and up review by the lawmakers before they pass the appropriation sum. According to him, in 2011 budget; the National Assembly increased the proposed budget sent by the executive by close to a trillion naira.

In the same budget, the National Assembly increased its own share substantially. He argued that issues of ethics and probity can easily be raised about the action of the National Assembly in reviewing its own allocation upward. By increasing the budget sum much, the legislature is subverting the role of the executive to give policy direction⁶² Also, during the House of Representatives Ad-hoc Committee probe of Capital Market, Ms. Aruma Oteh, the then Director General of Securities and Exchange Commission openly accused Mr. Herman Hembe leader of the House Committee of requesting for bribe.⁶³ The allegations and counter allegations between the duos led to re-composition of another committee.

Apart from the challenges of corruption and lack of accountability, other factors that hampers on the effectiveness of oversight in Nigeria include: Overzealousness on the part of the legislators.

The power of legislative oversight is not without limitations, this was rightly captured by the Court of Appeal in the case of Tony Momoh vs. Senate of the National Assembly⁶⁴. In that case, the Court of Appeal clearly held that section 82 of the 1979 Constitution

⁶⁰ Obasanjo, O., 'Lawangate: NASS Uses Oversight Function to Amass Wealth', (A paper presented to the Senior Civil Servant of Niger State at a retreat in Abuja on June 22nd 2012).

⁶¹ (n53)

⁶² Ibid

⁶³ Odilim E., 'Aruma Oteh: Where the House went too Far', Nigerian Compass, March 23rd 2012.

⁶⁴ (1982) NCLR 105

(akin to section 88 of the 1999 Constitution) is not designed to enable the legislature usurp the general investigating functions of the executive nor the adjudicative functions of the judiciary. Any invitations by the legislature to any person outside the purpose defined in section 82(2) that is now 88(2) of the 1999 Constitution is invalid. The prosecution of the persons guilty of corrupt practices or gross inadequacies or misconduct in the discharge of the public office is left to the executive. This only reinstates the doctrine of separation of power between the various arms of government. Invariably, the oversight functions of the legislature end up with identifying corruption, misconduct of public officers, resource waste or inefficiency in service, review of government actions and activities for good governance, etc, and findings thereof are referred to the appropriate arm of government for further necessary actions in order to address the issues raised therein in appropriate and acceptable procedures.

The get rich quick syndrome of the legislature is another challenge to effective oversight in Nigeria. The perception of some National Assembly members of legislative oversight function as a short-cut to richness is generally worrisome because it negates the principle of good governance.⁶⁵ Any legislative investigation means a sure way of enriching the legislators involved in the exercise, and it earns them political relevance in the system as they seem to assume quasi-judicial demigods to those public officers being investigated. This is why members of the National Assembly lobby for juicy committees either in the Senate or in the House of Representatives.⁶⁶

Legislators often apply ungodly strategies or undue influence on the leadership of the National Assembly to obtain the chairmanship ticket of one juicy committee or the other, and as well be appointed as members to many other legislative committees. As soon as they secure the chairmanship of these committees, the next item on their political agenda is oversight functions, which results in the preliminary investigation trips to parastatals and government departments under their supervision, and subsequent public sittings

⁶⁵ (n51)

⁶⁶ Ibid

(a parliamentary simulation exercise for public entertainment).⁶⁷ Most often, the orchestrated committees abandon the substance at issue to chase the shadow with a view to humiliating and intimidating their prey to bow to pressure and accept to negotiate for unholy settlement. The legislature often enmesh its integrity in inordinate crave for materialism as against service to humanity. It is unfortunate that majority of members of parliament have lost their senses of decency and dignity.⁶⁸

Other factors that hampers effective oversight in Nigeria is the absence of trust in the lawmakers. Absence of trust makes oversight to be perceived by the public as blackmail, selective and cheap means to amass wealth by the lawmakers. Also, the lukewarm attitude with which resolutions of the National Assembly are being treated cripples the legislature's oversight. About 80 per cent of the work of the National Assembly is based on resolutions and most often, there is flagrant disregard of several resolutions passed by the legislature. Passage of frivolous resolutions such as the then continuous demand for the removal of Ibrahim Magu, the acting chairman of Economic and Financial Crimes Commission makes mockery of National Assembly's resolution. One would expect the national legislature to quickly seek judicial interpretation of its power on approval of key appointments.

Inadequate funding also hampers effective legislative oversight. There are frequent allegations of non-release of funds meant for legislative use. The legislature has accused the executive of deliberately starving it of funds which has affected prompt payment of its allowances, and effective supervision of projects to ascertain progress and budgetary performance.⁶⁹ High turnover of legislators is another challenge as those with requisite experience are not returned to the house, another reason that is responsible for the failure of the National Assembly in its oversight function is procedural problem. This factor permits the House leaders to reshuffle committees and nominate their cronies into juicy committees. Many members resort to subversion of the house

⁶⁷ Ibid

⁶⁸ Ibid

⁶⁹ PLAC (n24)

activities when removed or fail to be nominated to juicy committees. Accusations of undue insubordination have been pointed at the direction of political parties. Between 1999 and 2007, Chief Olusegun Obasango got more involved in issues that are pure legislative affairs. If this is compared with late Yar'dua, former President Goodluck Jonathan and the incumbent Muhammed Buhari regimes, there is improvement.⁷⁰

Another challenge that the legislative oversight faces is the irresponsiveness of the executive. During the former President Buhari's regime, when the wrath of insecurity was at its peak, after the beheading of 43 rice farmers in Borno, the House of Representatives invited the President to come and explain the security situation of the country, less than 24 hours to the address, the President suddenly declined the invite and the Attorney –General of the Federation put up the argument that the National Assembly has no powers to invite the President.⁷¹ A similar situation also happened in 2020 when the House of Representatives invited some government agencies like the Central Bank, Nigerian National Petroleum Corporation and National Emergency Management Agency while investigating the alleged sale of some national assets without due process and the heads of these agencies failed to appear before the House.⁷²

5. Conclusion

Legislative oversight function is the eyes of the people in government that watch and monitor the activities of the executive arm and its agencies in the implementation of laws, programmes and policies meant to serve the collective interest of the electorates. It dictates waste, inefficiency, ineffectiveness, corruption, mismanagement of public resources, etc. Its relevance in democratic governance need not be overemphasized. Oversight function is essentially valuable in ensuring that the intent of the legislature in

⁷⁰ Ibid

⁷¹ Dozie Emmanuel, "How National Assembly's weak oversight role encouraging poor governance in Nigeria", available at <https://businessday.ng/politics/article/how-national-assemblys-weak-oversight-role-encouraging-poor-governance-in-nigeria/> , accessed 5 September 2023.

⁷² Chiedu Asadu, "Reps: NNPC, CBN shunned our invitation...we'll report them to Buhari", available at Reps: NNPC, CBN shunned our invitation... we'll report them to Buhari | TheCable, accessed 6 September 2023.

legislating laws that will improve the living standard of the poor is reflected in the performance of the executive functions.

In democratic governments around the world, the legislative arm of government occupies a central position in the machinery of government. Indeed, it has been observed that the legislature is the connecting thread of the democratic process and arguably it's most central institution. In Nigeria, the legislature is the first among the three organs of government to be so recognized in the Constitution. Traditionally, the legislature is vested with formal law making powers, which give legislators the authority to influence public policy. Incidental to lawmaking is the legislative oversight function, which is as important as the law making function itself. This is because by nature, oversight is a follow-up activity intended to ensure that legislative goals are met. In other words, the passing of a piece of legislation does not mean that all is well.

Oversight assures that the laws work. It encompasses every attempt by the legislature to review, monitor and supervise government activities, programmes and policies to ensure that they are legal, effective and efficient. Now, considering the relatively large size of government, the oversight function can best be undertaken through the committee system in which the entire legislature is divided into committees with assigned responsibilities. The committee system in contemporary times has become the power house of the legislature in both advanced and emerging democracies. The trend towards the use of committees is often seen as one of the distinctive features of modern democracies.

As elucidated above the importance of oversight cannot be overemphasized, it upholds the principle of separation of power and checks and balances and makes the legislature accountable to the people. The practice in Nigeria with its many successes is equally marred with challenges as highlighted above. The practice in other jurisdictions have also been espoused with a view to learning some valuable lessons on how best legislative oversight functions can be carried out in Nigeria. In the light of the above therefore the following recommendations are made.

6. Recommendations

- i. Committee membership of the National Assembly should be based on qualification, expertise and experience and not the current structure where appointments are based on longevity in the House, party loyalty and compensation. The personal qualities of competent and trained members of the legislature are of utmost importance in carrying out their legislative oversight functions. If there are no competent personnel, legislative oversight will fail. Therefore, it is imperative to have periodic training for the members of the legislature in order to equip them with the tools they need to be able to effectively conduct this duty. Training is particularly important especially with the level of high turnover of legislators every election year in Nigeria.
- ii. The legislature must endeavor to conduct its oversight functions within the confine of the law that established the National Assembly. It is important to respect and observe the principle of separation of power as provided in the 1999 Constitution of the Federation.
- iii. The legislature should live above the board in all its public and private functions. The interest and unity of the country should override personal and collective interests of the legislative members. Legislative oversight functions/ assignments should not be seen as sources of exploitation to enrich themselves. Dignity, integrity, fair play, accountability and transparency in the act of governance must always be the watch word of the legislature. If the legislature is short of the above, no matter what it discovered in the course of its oversight activities is likely to be seen as an empty claim for pecuniary gain.
- iv. The functions of the legislative oversight should advance beyond mere investigation and recommendation. There is need for constitutional and/or legal teeth to be structured for effective and efficient legislative oversight, as a watchdog on the executive arm and its agencies, to bite culprits or cause the persons found culpable to be sanctioned to serve as deterrent. The legislature should have legal power to compel the executive arm of government to take appropriate action to

institute judicial panel of inquiry on matters that have been completely investigated by the legislature and the reports on such cases have been duly passed on to the executive to take logical conclusive action.

- v. Greater participation of the mass of the people in the business of governance will not only make policies more responsive to the concerns, yearnings and aspirations of the people. It would also improve the performance of the various state institutions, including the parliament, especially in its oversight responsibilities.
- vi. The executive should desist from undue interference with the workings of the legislature, and they should endeavor to implement valid recommendations made by the legislature in the course of their oversight functions. The executive should also endeavor to be responsive to the legislatures especially when the heads of Ministries, Departments and Agencies are invited during investigations to come and shed light on some cogent situations.

There should be adequate funding for oversight activities and proper accountability for the usage of such funds, so that the legislature can go about their oversight duties unhindered and will not be compromised in the discharge of their duties and the legislature also need to ensure that funds allocated for legislative functions are actually used to carry out that purpose.